

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

PAUL MCCURLEY, III, individually and
on behalf of all similarly situated
individuals,

Plaintiffs,

v.

FLOWERS FOODS, INC. and DERST
BAKING COMPANY, LLC,

Defendants.

Civil Action No.: 5:16-cv-00194-JMC

**JOINT ORDER REGARDING
INDIVIDUALS WHO FAILED TO
SIGN NEW DISTRIBUTOR
AGREEMENTS**

On July 13, 2018, Plaintiffs filed an Unopposed Motion for Final Approval of the Proposed Class and Collective Action Settlement in this matter. (ECF No. 160.) The court held a Fairness Hearing on August 28, 2018. (ECF No. 164.) On September 10, 2018, the court issued an Order, granting final approval of the Class and Collective Action Settlement. (ECF No. 165.) Per that Order, all settlement class members who are current distributors and who did not timely opt out of the settlement were required to execute a copy of the New Distributor Agreement within 45 days, by October 25, 2018. (*Id.* at 3.) The Order further provided that the Parties were to notify the court within 5 days of that deadline if there remained any unmet conditions of settlement, including the execution of New Distributor Agreements. (*Id.*)

Defendant Derst Baking Company, LLC, through its counsel, gave timely notice of the unmet conditions of the Settlement Agreement. Specifically, the Parties agree that the following five (5) members of the Rule 23 Class were required to sign New Distributor Agreements and have not done so, despite multiple notices from the Settlement Administrator and counsel:

1. Matthew Stuck
2. James G. Boles
3. Edward D. Robertson
4. Joseph Donoghue
5. Michael D. Morrow

The Settlement Agreement contemplates that settlement class members who fail to timely execute the New Distributor Agreement may be “treated as having filed a proper Opt-Out Request.” (ECF No. 142-2, ¶ 3.22.) Here, the Parties stipulate, and the court hereby finds, that the above-referenced five (5) individuals have failed to comply with the conditions of the settlement and are hereby deemed to have opted out of the settlement and are not entitled to any distribution or recovery thereunder.

The Parties stipulate and the court orders that the funds identified for distribution to the above-listed individuals in Exhibit 9 to the Settlement Agreement shall instead be distributed by the Settlement Administrator to the remainder of the Rule 23 Class on a pro rata basis. Upon entry of this order, the Settlement Administrator may proceed with distribution of settlement funds.

IT IS SO ORDERED.



United States District Judge

November 14, 2018
Columbia, South Carolina

WE SO STIPULATE:

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

s/Michael Oliver Eckard

Michael Oliver Eckard (FBN 12055)
Luci L. Nelson (FBN 10341)
211 King Street, Suite 200
Charleston, SC 29401
Telephone: (843) 853-1300
Facsimile: (843) 853-9992
michael.eckard@ogletreedeakins.com
luci.nelson@ogletreedeakins.com

Charles T. Speth (FBN 4258)
1320 Main Street, Suite 600
Columbia, SC 29201
803.252.1300 (telephone)
803.254.6517 (facsimile)
ted.speth@ogletreedeakins.com

Attorneys for Defendants

RICHARDSON PATRICK WESTBROOK
& BRICKMAN, LLC

s/Matthew A. Nickles

Terry E. Richardson, Jr. (FBN: 3457)
Chris Moore (FBN: 10445)
Matthew A. Nickles (FBN: 1101)
1730 Jackson Street
Post Office Box 1368
Barnwell, South Carolina 29812
T: 803.541.7850
F: 803.541.9625
trichardson@rpwb.com
cmoore@rpwb.com
trichardson@rpwb.com

James F. Walsh, Jr.
1436 Amelia Street
Orangeburg, South Carolina 29115
T: 803.534.6061
jfwwalsh@bellsouth.net

Attorneys for Plaintiffs